

REMARKS

The August 7, 2007 Office Action has been carefully reviewed and considered. Claims 1-44 are pending in the present application. Of these, claims 1-12 and 24-35 were previously elected with traverse in response to a prior restriction / election requirement. Claims 1-7, 9-11, 24-30, and 32-34 stand rejected. Claims 8, 12, 31 and 35 are objected to as being dependent upon a rejected base claim. Applicants wish to thank the Examiner for noting the allowability of dependent claims 8, 12, 31 and 35 if re-written in proper independent form. However, independent claims 1 and 24 are not anticipated as alleged by the Patent Office. Instead, the cited reference fails to disclose several features of the independent claims. For at least this reason, Applicant respectfully submits that all claim rejections must be withdrawn.

35 U.S.C. §102(e) Claim Rejections

Claims 1-7, 9-10, 24-30 and 32-33 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2004/0160922 (Nanda). Claim 1 is directed to a method of reverse link rate control at a mobile station while independent claim 24 is directed to the mobile station itself. Both claims 1 and 24 require monitoring of reverse link throughput. In addition, claims 1 and 24 both require the generation of reverse link rate requests based on, among other things, the reverse link throughput. Nanda fails to disclose both of these claim features. Accordingly, the §102(e) claim rejections must be withdrawn.

The law of claim construction in *ex parte* prosecution requires the Examiner to give a claim term its plain and ordinary meaning, unless it is inconsistent with the specification. MPEP §2111. Moreover, the claims themselves provide substantial guidance as to the meaning of particular claim terms. The context of the surrounding words of the claim is considered in determining the ordinary and customary meaning of the claim terms. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). And, of course, the construction given a claim term must

be consistent with the specification and how a person of ordinary skill in the art would construe the term in light of the specification. The Examiner's implicit construction of the term "reverse link throughput" fails on all accounts. It is inconsistent with the plain and ordinary meaning of the term, and inconsistent with the specification and how a person of ordinary skill in the art would construe the term in light of the specification.

"Reverse link throughput", properly construed, means "the amount of data transferred from a mobile user to a base station divided by the time taken to transfer it," typically expressed in bits or bytes per second. This is the plain and ordinary meaning of the term (see dictionary.com definition of "throughput" and wikipedia.com definition of "reverse link"). This construction is also consistent with the specification and how a person of ordinary skill in the art would construe the term. See, for example, paragraph [0024] of Applicant's specification where throughput is computed in bits-per-second (bps).

The Examiner construes the "reverse link throughput" claim term so broadly to include Nanda's packet transmission deadlines. See Item 3, third paragraph of the Office Action where the Examiner alleges that paragraph [0027] in Nanda discloses Applicant's claimed reverse link throughput monitoring feature. Applicant respectfully disagrees. Paragraph [0027] in Nanda has nothing to do with monitoring reverse link throughput. Instead, paragraph [0027] in Nanda mentions how Nanda's mobile station arranges its output queue "so that the packets are stored in the order of their deadlines, the earliest deadline first."

No reasonable construction of the term "reverse link throughput" can include Nanda's packet transmission deadlines. Nanda's packet transmission deadlines neither explicitly nor impliedly indicate the amount of data transferred from a mobile user to a base station. Instead, Nanda's packet transmission deadline are based on when a packet is placed in the output queue of Nanda's mobile station and the maximum permitted delay for the service associated with the packet. See paragraph [0027] in Nanda. Clearly, Nanda's packet transmission

deadlines do not account for actual data loss which may occur over a reverse link. By monitoring reverse link throughput, the claimed invention can account for such data loss.

Based on at least the preceding arguments, it is illogical to assert that determining a packet transmission deadline in Nanda is identical to monitoring reverse link throughput. Thus, Nanda does not disclose the reverse link throughput monitoring feature as claimed. If Nanda does not monitor reverse link throughput, then Nanda also does not generate reverse link rate requests based on reverse link throughput also as claimed. Accordingly, Applicant respectfully requests withdrawal of all claim rejections.

35 U.S.C. §103(a) Claim Rejections

Claims 11 and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Nanda in view of U.S. Patent Publication No. 2003/0219037 (Toskala). Claim 11 depends from claim 1 and claim 34 depends from independent claim 24. Claims 1 and 24 include the reverse link throughput monitoring and reverse link rate request generation features discussed above. Nanda fails to disclose both of these claim features as previously explained herein. Thus, the §103(a) claim rejections must be overturned for at least this reason.

Conclusion

Applicants respectfully submit that all claims 1-7, 9-11, 24-30, and 32-34 are patentable over the cited references in view of the remarks made above. Action to that affect is respectfully requested. The Examiner is encouraged to contact Applicants' attorney at (919)-854-1844 if any outstanding matters can be readily addressed by a phone call.

Respectfully submitted,

COATS & BENNETT, P.L.L.C.



Mark R. Bilak
Registration No.: 47,423

1400 Crescent Green, Suite 300
Cary, NC 27518
Telephone: (919) 854-1844
Facsimile: (919) 854-2084

Dated: November 6, 2007